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January 15, 2020

## PSC STAFF OPINION 2020-001

Hon. James M. Crawford  
Crawford & Baxter P.S.C.  
P.O. Box 353  
523 Highland Avenue  
Carrollton, KY 41008

Re: Owen Electric Cooperative, Inc. 2020-2021 Construction Work Plan

Dear Mr. Crawford,

Commission Staff acknowledges receipt on November 26, 2019 of your letter on behalf of Owen Electric Cooperative, Inc. (Owen Electric) requesting a staff advisory opinion. Specifically, the letter requests an opinion as to whether any or all projects contained in Owen Electric's 2020-2021 Construction Work Plan (CWP) require a Certificate of Public Convenience and Necessity (CPCN) or whether the projects fall within the "ordinary course of business" exemption and, therefore, do not require a CPCN.

Pursuant to the Commission's decision that each construction project contained in a CWP should be analyzed on an individual basis to determine whether that individual project is exempt from the requirement in KRS 278.020(1) to obtain a CPCN, Commission Staff has reviewed the projects contained in Owen Electric's 2020-2021 CWP. This letter represents Commission Staff's opinion, which is advisory in nature, and not binding on the Commission should the issues herein be formally presented for Commission resolution.

As with all legal opinions requesting a determination of the exemption from the requirement of a CPCN, Commission Staff's review does not consider the reasonableness or the need for each project. Therefore, because reasonableness and need are not considered herein, or in other non-rate cases, the cost of such a project can be denied recovery in a rate case if found to be unreasonable or unnecessary.

According to its 2020-2021 CWP, Owen Electric proposes construction identified by the following RUS Codes: (1) Code 100 construction for new services at an estimated total cost of \$9,037,709; (2) Code 300 line conversion and replacement at an estimated total cost of \$6,423,880; (3) Code 600 miscellaneous distribution equipment at an estimated total cost of \$21,290,191;<sup>1</sup> (4) Code 610/611 line relocations at an estimated total cost of \$832,140; and (6) Code 700 other distribution items (outdoor lighting and AMI/SCADA software and hardware) at an estimated cost of \$773,743.

KRS 278.020(1) provides, in relevant part, as follows:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

Regarding the exception to the CPCN requirement, Administrative Regulation 807 KAR 5:001, Section 15(3) provides, in full, as follows:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

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<sup>1</sup> The estimated cost of each individual Code 600 projects over the two-year CWP period are as follows:

- Code 601 – New Transformers/Meters .....\$6,696,678
- Code 602 – Service Upgrades .....\$459,683
- Code 603 – Sectionalizing .....\$2,000,000
- Code 604 – Voltage Regulators .....\$86,000
- Code 606 – Pole Replacement .....\$5,275,831
- Code 607 – Miscellaneous .....\$4,000,000
- Code 608 – Conductor Replacement (OH) .....\$2,499,000

In analyzing whether the proposed projects would materially affect Owen Electric's financial condition, Commission Staff takes notice of Owen Electric's 2018 Annual Report, which shows Owen Electric having total utility plant of approximately \$140,837,199 as of December 31, 2018. Commission Staff is of the opinion that the individual projects in Owen Electric's 2020-2021 CWP do not require a CPCN with the exception of the projects associated with Code 606 – Pole Changes and Code 608 – Overhead Conductor Replacement. Additional information is needed before Commission Staff can make a final evaluation as to whether the Code 606 and 608 projects can be considered exempt from the CPCN requirement. As for the other individual projects, when reviewed individually, each of those proposed construction project based on its estimated cost would not materially impact Owen Electric's existing financial condition. Therefore, each construction project (other than the Code 606 and 608 projects) is generally considered an extension in the ordinary course of business. Likewise, the cost estimate of each project considered separately in the 2020-2021 CWP will not have an immediate or significant impact on Owen Electric's rates. Lastly, the individual construction projects would not result in wasteful duplication of facilities or conflict with the service of other utilities. Thus, Commission Staff is of the opinion that each of the proposed projects set out in Owen Electric's 2020-2021 CWP (other than the Code 606 and 608 projects) satisfy the "ordinary course of business" exemption from CPCN requirement.

Regarding the Code 606 and 608 projects, Commission Staff requests that Owen Electric provide a response to the following questions within 10 days from the date of this letter.

1. Refer to the 2020-2021 CWP, Section III-B, page 4, regarding Code 606 Pole Changes. Identify the number of lower priority poles that had been identified for change out but not yet replaced and explain whether Owen Electric anticipates that the backlog of lower-priority poles identified for replacement will be eliminated over the two-year CWP period. Also, explain why the projected cost for each pole change increases by 8.1 percent in 2020 and 12.5 percent in 2021 as compared to the cost per pole change in 2017 and 2018.
2. Refer to the 2020-2021 CWP, Section III-B, page 4, regarding Code 608 Overhead Conductor Replacement. Explain why Owen Electric is projecting 14 miles of aged conductor to be replaced over the two-year CWP period when 10 miles of aged conductor was replaced during 2017 and 2018. Also, explain the projected cost per mile of \$175,000 in 2020 and \$182,000 in 2021 when the actual cost per mile was \$64,021 over the two-year period from 2017 through 2018.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission

should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Quang D. Nguyen at (502) 782-2586.

Sincerely,

A handwritten signature in blue ink, appearing to read "John E.B. Pinney", with a large, stylized flourish extending to the right.

John E.B. Pinney  
Acting General Counsel

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